

Message Text

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ORIGIN L-03

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DRAFTED BY L/CA:DRHENDERSON:SCH

APPROVED BY L:JHMICHEL

EUR/SE - A. FLANIGAN

CA -3. WATSON

JUSTICE - J. KEENEY

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O 261920Z AUG 78 ZFF4

FM SECSTATE WASHDC

TO AMEMBASSY ANKARA NIACT IMMEDIATE

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E.O. 11652:N/A

TAGS: CARR, TU

SUBJECT: REMAINING ISSUES: PRISONER TEANSFER TREATY

REFS: (A) ANKARA 6150; (B) ANKARA 6152

1) THIS MESSAGE TRANSMITS DEPARTMENT'S COMMENTS ON DELEGA-
TION PROPOSALS CONTAINED ANKARA 6152.

2) VERIFICATION OF CONSENT -- WE UNDERSTAND TURKISH SENSI-
TIVITIES ABOUT MAGISTRATE SERVING AS VERIFICATION OFFICER,
AND AGREE THAT VERIFICATION OFFICER NEED NOT BE A MAGIS-
TRATE. HOWEVER, DEPT. DOES NOT RPT. NOT BELIEVE BROAD DI-
RECTION OF DISTRICT COURT UNDER 18 U.S.C. 4108 SHOULD BE SO
NARROWED THAT CONSULAR OFFICERS ARE ONLY U.S. OFFICIALS
COMPETENT TO BE DESIGNATED TO PERFORM VERIFICATION FUNC-
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TION. THERE MAY WELL BE CASES THAT ARISE, WHERE DESIGNATION
OF SOMEONE OTHER THAN A CONSULAR OFFICER MAY BE MORE CON-
VENIENT, AND WHERE GOT WOULD HAVE NO OBJECTION. ACCORDINGLY,
DELEGATION SHOULD SEEK TURKISH ACCEPTANCE OF FORMULA WHICH
PERMITS VERIFICATION TO BE PERFORMED BY US DIPLOMATIC OR
CONSULAR OFFICER PRESENT IN TURKEY OR OTHER PERSON ACCEP-
TABLE TO BOTH GOVERNMENTS. THIS FORMULA WOULD OBTAIN TURKISH

ACCEPTANCE AT THIS TIME OF ANY DIPLOMATIC OR CONSULAR OFFICER, AND WOULD PERMIT FUTURE AD HOC DESIGNATIONS OF OTHER PERSONS WITH GOT CONCURRENCE. (FOR EXAMPLE, A CASE

MIGHT ARISE WHERE DIFFICULTY IN ASCERTAINING CONSENT WOULD WARRANT TDY ASSIGNMENT OF STATE OR JUSTICE DEPT. OFFICER WITH SPECIALIZED KNOWLEDGE OR TRAINING). DELEGATION IS AUTHORIZED TO AGREE TO WHATEVER FORMULA IT BELIEVES IS MAXIMUM OBTAINABLE IN PRESERVING US DISCRETION ON THIS ISSUE.

3) SUBSTITUTED SENTENCES -- DEPARTMENT UNDERSTANDS PROPOSAL IN PARA 6 OF REF (B) TO BE, IN EFFECT, THAT WE WOULD TELL THE TURKS BEFORE THE TRANSFER THE LONGEST PERIOD WHICH THE PRISONER MIGHT HAVE TO SERVE (THE "MANDATORY RELEASE DATE"). THEREAFTER, AFTER THE RETURN AND THE PAROLE COMMISSION PROCEEDING AND DECISION, WE WOULD INFORM THE TURKS OF THE OUTCOME AND PROVIDE TEXT OF PAROLE COMMISSION DECISION. ON THIS UNDERSTANDING, DELEGATION'S PROPOSAL DESCRIBED PARA 6 OF REF (B) ACCEPTABLE. WE BELIEVE IT IMPORTANT THAT UNDERTAKING BY USG TO PROVIDE TEXT OF PAROLE COMMISSION DECISION BE MADE EXPLICIT IN TREATY. THIS WILL HELP TO AVOID POSSIBLE CHALLENGES BASED ON PRIVACY CONSIDERATIONS TO OUR AUTHORITY TO CARRY OUT THIS UNDERSTANDING. IF WE HAVE MISSED THE POINT, PLEASE ADVISE. (FYI: WE HAVE SOME CONCERN THAT WE HAVE MISSED THE POINT, SINCE FROM WASHINGTON, IT IS NOT CLEAR HOW THIS PROPOSAL WOULD SATISFY THE LIMITED OFFICIAL USE

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TURKS. END FYI).

4) WE CANNOT SUPPORT FALLBACK DESCRIBED PARA 7 OF REF (B). WE DO NOT BELIEVE THAT EVEN OUR BEST ESTIMATES WILL BE SUFFICIENTLY RELIABLE TO MAKE THIS PROVISION USEFUL TO THE TURKS OR TO AVOID ACRIMONY, SHOULD OUR ESTIMATES BE INCORRECT. DELEGATION IS NOT RPT NOT AUTHORIZED TO PROPOSE THIS FALLBACK.

5) HAS DELEGATION CONSIDERED POSSIBILITY OF ASSURANCE TO GOT THAT DECISIONS REGARDING PERIOD FOR WHICH SANCTION IS TO BE ENFORCED WILL BE MADE ON SAME BASIS AS IN OTHER CASES, AND WILL NOT RPT NOT DISCRIMINATE AGAINST SENTENCES IMPOSED BY COURTS OF TRANSFERRING STATE.

6) DEPT. OF JUSTICE CONCURS. CHRISTOPHER

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